D2 Abatement, Inc. *and* Teamsters Local 838 affiliated with International Brotherhood of Teamsters. Case 14–CA–106806

September 24, 2014

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND JOHNSON

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed by Teamsters Local 838 affiliated with International Brotherhood of Teamsters (the Union), on June 10, 2013, and an amended charge filed by the Union on August 12, 2013, the General Counsel issued the complaint on August 26, 2013, against D2 Abatement, Inc. (the Respondent), alleging that it violated Section 8(a)(5) and (1) of the Act.

Subsequently, the Respondent executed an informal settlement agreement, which was approved by the Regional Director for Region 14 on October 31, 2013. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to reimburse certain named employees for medical expenses incurred between February 13, 2013, and August 1, 2013, to be paid in equal monthly installments to the Region beginning on November 15, 2013.[1]

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on August 26, 2013, in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By email dated May 15, 2014, the compliance assistant for the Region reminded the Respondent of its obligation to submit the scheduled installment payment to the Region on May 15, 2014. The email further advised the Respondent that failure to timely remit payment may culminate in the initiation of default proceedings.

By letter dated May 23, 2014, the Regional Director informed the Respondent that it had still failed to comply with the financial terms of the settlement agreement and the modified installment agreement by failing to submit its scheduled installment payment to the Region on May 15, 2014. The letter reminded the Respondent that the settlement agreement provided that, in the event of default on the installment schedule, the total amounts owed, less any amounts paid, would become immediately due and payable. The letter further advised the Respondent that, if its noncompliance was not cured by June 6, 2014, the Region would initiate default proceedings, including reissuing the complaint previously issued on August 26, 2013, and filing a motion for default judgment with the Board. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on June 17, 2014, the Regional Director reissued the complaint. Also on June 17, the General Counsel filed a Motion for Default Judgment with the Board. On June 19, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the financial terms of the settlement agreement and the modified installment agreement by failing

[1] By letter dated January 7, 2014, the Respondent executed a modification to the terms of the installment payment plan (the modified installment agreement), which was approved by the Regional Director on January 7, 2014. The modified installment agreement only affected the amounts of the installment payments.

to make the required medical expense reimbursements. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent's answer to the original complaint has been withdrawn and all of the allegations in the reissued complaint are true.[2] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Claycomo, Missouri, and has been engaged in asbestos and lead abatement, industrial cleaning, and recycling operations.

In conducting its operations, during the 12-month period ending June 30, 2013, the Respondent performed services valued in excess of $50,000 in states other than the State of Missouri, and purchased and received at its Claycomo, Missouri facility goods valued in excess of $50,000 directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Duane Jones	President
Kenneth Pope	Supervisor

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All warehouse equipment operators who are employed by Respondent in the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri, excluding supervisors as defined by the Act.

Since about 2007, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 7, 2013 to January 6, 2015. At all times since about 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about January 7, 2013, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to maintain employees' health, vision, and dental benefits and by failing to remit to the Union dues deducted from employees' paychecks.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

About early to mid-June 2013, the Respondent, by Kenneth Pope, at the Respondent's facility, bypassed the Union and dealt directly with its employees in the unit by requesting that employees complete forms to change their health, dental, and vision insurance provider.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall comply with the remaining unmet financial terms of the settlement agreement approved by the Regional Director for Region 14 on October 31, 2013, and the modified installment payment agreement on January 7, 2014, by reimbursing employees Darren Wilson and Brian Luna for the remaining balance of their medical expenses incurred between February 13 and August 1, 2013, immediately and in full. Accordingly, we shall order the Respondent immediately to remit the full $6550.81 remaining due to the Region (Darren Wilson being owed $1017 and Brian Luna being owed $5533.81), along with any additional fees or expenses incurred by Wilson and Luna based on the Respondent's failure to comply with the terms of the settlement agreement and the modified installment agreement, with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173

[2] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

(1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, we shall order the Respondent to compensate Wilson and Luna for the adverse tax consequences, if any, of receiving lump-sum amounts and to file a report with the Social Security Administration allocating the amounts to the appropriate calendar quarters for employees. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations," including backpay beyond that specified in the agreement.[3] However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[4]

ORDER

The National Labor Relations Board orders that the Respondent, D2 Abatement, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

Remit $6550.81, and any additional fees or expenses incurred by Darren Wilson and Brian Luna based on the Respondent's failure to comply with the terms of the settlement agreement and the modified installment agreement, plus interest in the manner set forth in the remedy section of this decision, to Region 14 of the National Labor Relations Board to be disbursed to Darren Wilson and Brian Luna, in accordance with the terms of the settlement agreement and the modified installment agreement approved by the Regional Director on October 31, 2013, and January 7, 2014, respectively.

Compensate Darren Wilson and Brian Luna for the adverse tax consequences, if any, of receiving lump-sum payments, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

3. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 24, 2014

Phillip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Harry I. Johnson, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] As set forth above, the settlement agreement provided that, in case of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is appropriate to remedy such violations."

[4] See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default judgment here that the Board "issue an appropriate Remedial Order, including the full payment of remaining medical expenses reimbursements . . . . plus interest and any additional fees or expenses incurred by Mr. Wilson and Mr. Luna based on Respondent's failure to comply with the terms of the Settlement Agreement."